

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SPANISH COVE SANITATION, INC.	)	
_____	)	CASE NO.
	)	97-107
ALLEGED VIOLATION OF KRS 278.160	)	

ORDER

This proceeding involves an investigation of the billing practices of Spanish Cove Sanitation, Inc. ("Spanish Cove").<sup>1</sup> At issue is: (1) whether Spanish Cove willfully violated KRS 278.160 by charging rates for sewer service that differ from those set forth in its filed rate schedules; and (2) whether John Lawson, its principal stockholder and president, willfully aided and abetted Spanish Cove's alleged violation of KRS 278.160. Finding in the affirmative on both issues, we assess penalties of \$500 against Spanish Cove and Lawson and direct Spanish Cove to bill and collect the rates set forth in its filed rate schedule.

Procedure

On March 18, 1997, the Commission initiated this proceeding and directed Spanish Cove and John Lawson to show cause why civil penalties should not be assessed against them for alleged violations of KRS Chapter 278. This action followed our review of billing

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<sup>1</sup> Through this proceeding, the Commission has identified the utility as "Spanish Cove Sanitation System, Inc." The Kentucky Secretary of State's records indicate that the utility is incorporated as "Spanish Cove Sanitation, Inc." Accordingly, the Commission has amended the case style.

information which Spanish Cove submitted in another Commission proceeding<sup>2</sup> and which indicated that Spanish Cove was assessing charges other than those set forth in its filed rate schedules. In our Order of March 18, 1997, we further directed both parties to respond to the allegations and Spanish Cove to serve a copy of the Order to Show Cause upon those customers who were allegedly improperly billed. On April 7, 1997, Spanish Cove and Lawson submitted a joint response to the Order.

The Commission conducted a hearing in this matter on May 29, 1997. Spanish Cove and Lawson, represented by counsel, appeared. Lawson and Carryn Lee, manager of the Commission's Rates and Tariffs Branch, testified. Written comments of affected Spanish Cove customers were also presented. Following Spanish Cove's submission of certain information on July 28, 1997, this matter was submitted for decision.

#### Statement of the Case

Spanish Cove is a Kentucky corporation that operates sewage treatment facilities serving approximately 230 customers in the Spanish Cove Subdivision of Jefferson County, Kentucky.<sup>3</sup> As of December 31, 1996, it served approximately 77 single-family residences, 146 apartment/condominium units, and 7 commercial customers.<sup>4</sup> It has been

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<sup>2</sup> Case No. 96-266, The Application of Spanish Cove Sanitation System, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedures for Small Utilities. The record of this case has been incorporated by reference into the record of this proceeding.

<sup>3</sup> Annual Report of Spanish Cove Sanitation, Inc. to the Public Service Commission of Kentucky for the Year Ended December 31, 1996, at 12.

<sup>4</sup> Id.

in continuous operation since 1976. John Lawson is Spanish Cove's president and sole shareholder and has held these positions since the utility's inception.<sup>5</sup>

The Louisville Water Company ("LWC") performs Spanish Cove's billing operations. For LWC customers receiving their sewer service from Spanish Cove, LWC also includes a sewer service charge on its bi-monthly bill. The monies collected from this charge are then forwarded to Spanish Cove. At least once annually, LWC provides Spanish Cove with a listing of all Spanish Cove customers and the rate for sewer service. Spanish Cove reviews this list for accuracy and makes appropriate revisions.<sup>6</sup>

The Commission originally established Spanish Cove's rates for sewer service in 1976.<sup>7</sup> In 1982, upon Spanish Cove's application, the Commission adjusted these rates. It authorized Spanish Cove to assess its commercial customers a monthly rate of \$32.00 for each "building unit within a commercial development" and a monthly rate of \$11.50 for each "unit of [a] [m]ulti-[u]nit apartment building."<sup>8</sup> On February 15, 1983, Spanish Cove filed a rate schedule with the Commission that reflected these new rates.

On February 15, 1985, Lawson entered an agreement with Stanley F. Lipton, George T. Underhill, Jr., Jeff Underhill, and George Tody Underhill III (collectively

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<sup>5</sup> Transcript at 23.

<sup>6</sup> Id. at 32 - 34.

<sup>7</sup> Case No. 6594, Obtaining the Public Service Commission's Approval for the Construction, Financing and Fixing of Rates for the Spanish Cove Subdivision of Jefferson County, Kentucky (Oct. 21, 1976).

<sup>8</sup> Case No. 8487, Adjustment of Rates of Spanish Cove Sanitation, Inc. (August 12, 1982) at App. A.

"Lessors") to lease space for a coin laundromat at a commercial shopping center. The leased space, whose address is 5402 Delmaria Way, is located in or near the Spanish Cove Subdivision and is connected to Spanish Cove's sewage treatment facilities. The Lease Agreement required the Lessors to pay a monthly rate of \$150.00 to Spanish Cove for sewer service. This Lease Agreement was subsequently assigned to B. Klean II, Inc.<sup>9</sup>

In succeeding years, Lawson entered into lease agreements with other persons for space at the commercial shopping center. In 1989 he entered into an agreement with Concord Customer Cleaners, a dry cleaning firm, that required the monthly payment of \$150 to Spanish Cove for sewer service.<sup>10</sup> In 1995 he entered a similar agreement with Winn-Dixie, a grocery store, that required a monthly payment of \$195 to Spanish Cove for sewer service.<sup>11</sup>

In 1987 Lawson entered into an informal agreement with Herbert Van Arsdale II, the General Partner of Hurstbourne Gardens Apartments, regarding Spanish Cove's billing practices. Under this agreement, Spanish Cove agreed to bill Hurstbourne Garden Apartments based upon a 90 percent occupancy rate. When Van Arsdale acquired Hurstbourne Terrace Apartments, Spanish Cove applied the same billing treatment to that entity.<sup>12</sup> Spanish Cove, however, did not offer this billing arrangement to other customers

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<sup>9</sup> Case No. 94-346, B. Klean II, Inc. v. Spanish Cove Sanitation (Sep. 18, 1995), at 2.

<sup>10</sup> Transcript at 12 -14.

<sup>11</sup> Id. at 14 - 15.

<sup>12</sup> Id. at PSC Staff Exhibit 1.

who operated apartment buildings nor did it amend its filed rate schedule to reflect this practice.<sup>13</sup>

None of these agreements were filed with the Commission.<sup>14</sup> Lawson testified that these agreements were discussed with former Commission Chairman Richard Heman in the mid-1980s and that Heman advised that Spanish Cove could charge an agreed rate. He further testified that Heman informed him that the utility was not required to file these agreements with the Commission.<sup>15</sup> In an affidavit, Van Arsdale states that he participated in several telephone conversations with Heman regarding Spanish Cove's billing practices.<sup>16</sup> Neither Lawson nor Van Arsdale presented any documentary evidence to substantiate their claims. Neither Spanish Cove nor Lawson called Heman as a witness in this proceeding.

On August 31, 1994, B. Klean II, Inc. filed a formal complaint with the Commission against Spanish Cove in which it sought to recover amounts billed and collected for sewer service in excess of Spanish Cove's filed rates. After a hearing on the complaint, the Commission on September 18, 1995, found that Spanish Cove was charging and collecting amounts in excess of its filed rates and ordered it to cease that practice. We further

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<sup>13</sup> Id. at 43.

<sup>14</sup> At the hearing, Mr. Lawson testified that Spanish Cove filed its agreement with the Lessors in November 1995. See Transcript at 16. The Commission's records do not contain any evidence of such agreement or the letter accompanying that lease (Spanish Cove Exhibit 1). Neither Lawson nor Spanish Cove has presented any evidence that the Commission ever received the Lease Agreement or its cover letter. Lawson further testified that Spanish Cove had never received any response to the letter. Id. at 39.

<sup>15</sup> Id. at 29 - 30 and 46 - 47.

<sup>16</sup> Id. at PSC Staff Exhibit 1.

ordered that Spanish Cove refund to B. Klean II, Inc. all amounts billed and collected in excess of the filed rate.<sup>17</sup>

In June 1996, Spanish Cove applied to the Commission for a rate adjustment. As part of its application, Spanish Cove provided its billing records from LWC.<sup>18</sup> These records reflected rates for sewer service charged to the customers listed in Table I that differed from those set forth in Spanish Cove's filed rate schedule.

TABLE I

CUSTOMERS BILLED AT RATES OTHER THAN FILED RATES
T.K.'s Pub Concord Custom Cleaners Winn-Dixie B. Klean II 5500 Delmarie Way 5502 Delmarie Way Fireside Properties, Inc. SMV Properties Hurstbourne Terrace Apartments Hurstbourne Gardens Apartments

At the hearing, Lawson acknowledged that discrepancies between Spanish Cove's billed rates and its filed rate schedules existed. He testified that, in the cases of Concord Custom Cleaners, Winn-Dixie, B. Klean II, Inc., Hurstbourne Terrace Apartments and Hurstbourne Gardens Apartments, the differences in billed and filed rates reflected the agreements that he had entered with these customers. In each instance, the customer or its predecessor in interest had agreed to the billed rate.

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<sup>17</sup> Case No. 94-346, B. Klean II, Inc. v. Spanish Cove Sanitation (Sep. 18, 1995) at 8 - 9.

<sup>18</sup> See Transcript at PSC Staff Exhibit 3.

As to the rate billed to T.K. Pub's, Lawson contended that no discrepancy existed. He testified that T.K. Pub had leased 5 building units in the commercial shopping center that he owns. Each of these units had separate water connections. Spanish Cove, therefore, billed T.K. Pub at a monthly rate of \$160, or for 5 building units. Lawson further testified that T.K. Pub, without Lawson's knowledge or approval, removed the walls that separated the units and 4 of the 5 water meters serving these units. He also testified that Spanish Cove had only recently learned of the changes made to the building units and that the changes were contrary to the terms of T.K. Pub's lease agreement with Lawson.

As to the remaining discrepancies, Lawson attributed the undercharges to the Fireside Properties and to 5500 Delmarie Way and 5502 Delmarie Way to clerical errors.<sup>19</sup> He further testified that no billing error occurred with SMV Properties. He stated that the Commission in reviewing Spanish Cove's billing records had failed to consider that Spanish Cove actually serves 20 units.

As of April 1, 1997, Spanish Cove ceased charging rates that appeared in conflict with those in its filed rate schedules.<sup>20</sup> Mr. Lawson testified that all monies in excess of the filed rate that Spanish Cove collected from B. Klean II, Inc. have been refunded to that customer in accordance with the Commission's Order of September 18, 1995.

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<sup>19</sup> Id. at 18.

<sup>20</sup> Response to Allegations, Exhibit 1.

### Discussion

KRS 278.160 codifies the "filed rate doctrine." It requires a utility to file with the Commission "schedules showing all rates and conditions for service established by it and collected or enforced." KRS 278.160(1). It further states:

No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

KRS 278.160(2).

Interpreting similarly worded statutes from other jurisdictions, courts have held that utilities must strictly adhere to their published rate schedules and may not, either by agreement or conduct, depart from them. Corporation De Gestion Ste-Foy v. Florida Power and Light Co., 385 So.2d 124 (Fla. Dist. Ct. App. 1980).<sup>21</sup> A similar rule applies to the published rate schedules of common carriers. See, e.g., Sallee Horse Vans, Inc. v. Pessin, Ky.App., 763 S.W.2d 149 (1988).

Failure to file with the Commission a rate schedule for its regulated services deprives a utility of the right to charge or collect those rates. A utility "can claim no rate as a legal right that is other than the filed rate." Montana-Dakota Util. Co. v. Northwestern Pub. Serv. Co., 341 U.S. 246, 251 (1951). See also GTE North Inc. v. Pub. Serv. Comm'n,

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<sup>21</sup> See also Haverhill Gas Co. v. Findlen, 258 N.E.2d 294 (Mass. 1970); Laclede Gas Co. v. Solon Gershman, Inc., 539 S.W.2d 574 (Mo. App. 1976); Capital Properties Co. v. Pub. Serv. Comm'n, 457 N.Y.S.2d 635 (N.Y. App. Div. 1982); West Penn Power Co. v. Nationwide Mut. Ins. Co., 228 A.2d 218 (Pa. Super. Ct. 1967); Wisconsin Power & Light Co. v. Berlin Tanning & Mfg. Co., 83 N.W.2d 147 (Wis. 1957).



500 N.W.2d 284, 289 (Wis. 1993) ("the receipt of compensation by a utility that is either greater or lesser than the filed rate is an unlawful act.").

This inflexibility is, in part, the result of a strong public policy to ensure rate uniformity, to "have but one rate, open to all alike, and from which there could be no departure." Boston & M.R.R. v. Hooker, 233 U.S. 97, 112 (1914). Equality among customers cannot be maintained if enforcement of filed rate schedules is relaxed. For this reason, neither equitable considerations nor a utility's negligence may serve as a basis for departing from filed rate schedules. Boone County Sand & Gravel Co. v. Owen County Rural Elec. Co-op. Corp., Ky.App., 779 S.W.2d 224 (1989).

The doctrine is also intended to preserve the Commission's "primary jurisdiction over reasonableness of rates and . . . ensure that regulated companies charge only those rates of which the agency has been made cognizant." City of Cleveland, Ohio v. Fed. Power Comm'n, 525 F.2d 845, 854 (D.C. Cir. 1976). Filed rates have been reviewed and found reasonable by the Commission. Prior to becoming effective, they are examined and questioned. This scrutiny is the principal reason for the Commission's existence.

The evidence of record clearly shows that Spanish Cove violated KRS 278.160 by charging and collecting rates other than those set forth in its filed rate schedule. That Lawson negotiated voluntary agreements with some of Spanish Cove's customers does not alter the unlawful nature of this conduct. KRS 278.160 expressly limits a utility's right to collect compensation for utility services to that prescribed in its filed rates. Courts interpreting the filed rate doctrine have consistently held that a voluntary agreement to deviate from filed rates was unlawful and that the utility or common carrier was entitled to

collect only the filed rate. See, e.g., Montana-Dakota Util. Co. v. Northwestern Pub. Serv. Co., 341 U.S. 246 (1951), Louisville & Nashville R. Co. v. Central Iron & Coal Co., 265 U.S. 59 (1924).

While Administrative Regulation 807 KAR 5:011, Section 13, permits a utility to enter contracts "governing utility service which set out rates, charges or conditions of service not included in its general tariff," it expressly requires that these contracts be filed with the Commission. Of the contracts that have been admitted in the record, moreover, none have Spanish Cove as a party and none have been filed with the Commission.<sup>22</sup>

Spanish Cove's actions, moreover, resulted in unreasonable rate discrimination between similarly situated customers in violation of KRS 278.170(1).<sup>23</sup> While billing Hurstbourne Terrace Apartments and Hurstbourne Gardens Apartments on a 90 percent occupancy basis in accordance with the terms of Lawson's agreement with Van Arsdale, it billed other customers who owned apartment buildings at a 100 percent occupancy rate. No reasonable basis for this disparate treatment existed.

We give no weight to Spanish Cove and Lawson's assertions that a former Commissioner approved of Spanish Cove's actions or improperly advised the utility.

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<sup>22</sup> None of the agreements that have been submitted in this proceeding are between Spanish Cove and its customers. All are between John A. Lawson, Shirley Ann Lawson and the customers.

<sup>23</sup> No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

Lawson's testimony is not credible. He produced no correspondence or written communication with the Commissioner on this issue. There is no evidence in the record that either Spanish Cove or Lawson made any effort to secure the testimony of the Commission official who allegedly gave the incorrect advice.<sup>24</sup>

Assuming arguendo that such representations were made, Spanish Cove and Lawson's reliance upon them was not reasonable. The Commission "acts and speaks only through its written orders." Union Light, Heat & Power Co. v. Pub. Serv. Comm'n, Ky., 271 S.W.2d 361, 365 (1954). The oral opinions of a Commission official cannot be considered as written orders. See Bee's Old Reliable Shows, Inc. v. Kentucky Power Co., Ky., 334 S.W.2d 765 (1960). Moreover, the clear and unequivocal language of KRS 278.160 and Administrative Regulation 807 KAR 5:011, Section 13, makes any reliance on this official's alleged opinion unreasonable.

Spanish Cove's violations of KRS 278.160, moreover, were willful violations. As a regulated utility, Spanish Cove should have been well aware of the requirements of KRS 278.160 when it began billing and collecting the unlawful rates. Assuming arguendo that it was not, the Commission's Order of September 18, 1995 in Case No. 94-346 clearly placed Spanish Cove on notice as to the requirements of KRS 278.160. Despite this clear articulation of the law, Spanish Cove continued to charge rates other than those set forth in its filed rate schedules.

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<sup>24</sup> In his sworn statement, Van Arsdale corroborates Lawson's testimony that telephone discussions with Heman occurred. Van Arsdale's statement, however, does not address any conversations with Heman regarding the utility's duty to file any agreement with the Commission. Van Arsdale's conversations with Heman concerned only the reasonableness of billing an apartment building based upon an average

The Commission further finds that Lawson aided and abetted Spanish Cove's violation of KRS 278.160. In his capacity as Spanish Cove's president and sole shareholder, Lawson also should have known of the requirements of KRS 278.160. He was the issuing official for the rate schedule under which Spanish Cove provided sewer service from February 3, 1983 until April 1, 1997. Moreover, he testified that he was aware of the Commission's Order of September 18, 1995 in Case No. 94-346.<sup>25</sup> Despite this knowledge, he continued to authorize the billing and collection of rates other than Spanish Cove's filed rates.

The Commission notes that this case is not the first instance where Spanish Cove has been cited for billing and collecting rates other than those set forth in its filed rate schedule. In Case No. 8487,<sup>26</sup> the Commission found that Spanish Cove was not charging rates that its tariff authorized. In Case No. 94-346, the Commission again found that Spanish Cove had been engaging in this illegal practice since 1985. The Commission finds that, in light of this history, Spanish Cove and its president should be assessed civil penalties for their misconduct.

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occupancy rate.

<sup>25</sup> Transcript at 37 - 39.

<sup>26</sup> Case No. 8487, Adjustment of Rates of Spanish Cove Sanitation, Inc. (Aug. 12, 1982) at 4.

### Conclusion

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. On August 12, 1982, the Commission established new rates for sewer service provide by Spanish Cove. These rates remained in effect until April 21, 1997.
2. On February 15, 1983, Spanish Cove filed with the Commission a rate schedule that reflected these rates.
3. This filed rate schedule provided for a monthly rate for commercial customers of \$32.00 for each unit within a commercial development, a monthly rate of \$11.50 per unit for multi-unit apartment buildings, and a monthly rate of \$15.30 for a single family residence.
4. Between February 15, 1983 and April 21, 1997, Spanish Cove's rates for sewer service were not altered or amended.
5. On February 15, 1985, John Lawson and Shirley Ann Lawson entered into a Lease Agreement with the Lessors to lease one unit at a commercial shopping center for a coin laundromat. Spanish Cove provides sewer service to this commercial shopping center.
6. The Lease Agreement provides that the Lessors pay a monthly rate of \$150.00 to Spanish Cove for sewer service to this commercial unit.
7. Spanish Cove has not filed the Lease Agreement with the Commission.
8. On March 16, 1993, the Lessors transferred the Lease Agreement to B. Klean II, Inc.

9. Between June 1, 1993 and September 1, 1995, Spanish Cove billed B. Klean II, Inc. at a monthly rate of \$150.00 for sewer service.

10. Pursuant to the rates contained in its filed rate schedule, Spanish Cove could only bill to and collect from B. Klean II, Inc. a monthly rate of \$32.00.

11. Pursuant to the Commission's Order of September 18, 1995 in Case No. 94-346, Spanish Cove has refunded to B. Klean II, Inc. the monies billed and collected for sewer service that exceeded its filed rates.

12. In October 1989, John Lawson and Shirley Ann Lawson entered into a Lease Agreement with Concord Custom Cleaners to lease one unit at a commercial shopping center for a dry cleaning business. Spanish Cove provides sewer service to this commercial shopping center.

13. The Lease Agreement provides that Concord Custom Cleaners pay a monthly rate of \$150.00 to Spanish Cove for sewer service to this commercial unit.

14. Spanish Cove has not filed the Lease Agreement with the Commission.

15. Between October 13, 1989 and April 1, 1997, Spanish Cove billed Concord Custom Cleaners at a monthly rate of \$150.00 for sewer service.

16. Pursuant to the rates contained in its filed rate schedule, Spanish Cove could only bill to and collect from Concord Custom Cleaners a monthly rate of \$32.00.

17. In March 1993, John Lawson and Shirley Ann Lawson entered into a Lease Agreement with Winn-Dixie to lease one unit at a commercial shopping center for a grocery. Spanish Cove provides sewer service to this commercial shopping center.

18. The Lease Agreement provides that Winn-Dixie pay a monthly rate of \$195.00 to Spanish Cove for sewer service to this commercial unit.

19. Spanish Cove has not filed the Lease Agreement with the Commission.

20. Between March 30, 1995 and April 1, 1997, Spanish Cove billed Winn-Dixie for sewer service at a monthly rate of \$195.00.

21. Pursuant to the rates contained in its filed rate schedule, Spanish Cove could only bill to and collect from Winn-Dixie a monthly rate of \$32.00.

22. During 1987 John Lawson, on behalf of Spanish Cove, entered an informal agreement with Herbert Van Arsdale II regarding Spanish Cove's billing practices toward Hurstbourne Gardens Apartments. Under this agreement, Spanish Cove agreed to bill Hurstbourne Gardens Apartments based upon a 90 percent occupancy rate.

23. When Van Arsdale subsequently acquired Hurstbourne Terrace Apartments, Spanish Cove applied the same billing treatment to that entity.

24. Spanish Cove did not amend its filed rate schedule to reflect this billing practice.

25. Spanish Cove did not offer this billing arrangement to other customers who operated apartment buildings.

26. Between 1992 and 1994, John Lawson and Shirley Ann Lawson leased 5 units of the Spanish Cove Shopping Center to Todd King for use as a lounge and restaurant known as "T.K.'s Pub." Spanish Cove provided sewer service to these units and billed the lessee at a monthly rate of \$160.00.

27. Since June 1994, T.K.'s Pub has been served through one water meter and the walls separating the 5 units have been removed. As a result of the changes, T.K.'s Pub should have been considered as one commercial unit for billing purposes and should have been billed at a monthly rate of \$32.00.

28. Since July 5, 1989, Spanish Cove has provided sewer service to a 12-unit apartment building whose address is 5500 Delmarie Way.

29. From July 5, 1989 to April 1, 1997, Spanish Cove billed 5500 Delmarie Way for sewer service at a monthly rate of \$136.00, or \$11.33 per apartment unit. According to Spanish Cove's filed rate schedules, the monthly rate should have been \$138.00, or \$11.50 per apartment unit.

30. Since January 4, 1985, Spanish Cove has provided sewer service to a 12-unit apartment building whose address is 5502 Delmarie Way.

31. From January 4, 1985 to April 1, 1997, Spanish Cove billed 5502 Delmarie Way for sewer service at a monthly rate of \$136.00, or \$11.33 per apartment unit. According to Spanish Cove's filed rate schedules, the monthly rate should have been \$138.00, or \$11.50 per apartment unit.

32. Since December 11, 1992, Spanish Cove has provided sewer service to a 4-unit apartment building whose address is 5504 Delmarie Way.

33. From December 11, 1992 to April 1, 1997, Spanish Cove billed Fireside Properties, Inc. for sewer service at 5504 Delmarie Way at a monthly rate of \$45.00, or \$11.25 per apartment unit. According to Spanish Cove's filed rate schedules, the monthly rate should have been \$46.00, or \$11.50 per apartment unit.



34. Since May 10, 1995, Spanish Cove has provided sewer service to a 20-unit apartment building whose address is 5508 Delmarie Way.

35. From May 10, 1995 to April 1, 1997, Spanish Cove billed SMV Properties for sewer service at 5508 Delmarie Way at a monthly rate of \$15.30, or \$.77 per apartment unit. According to Spanish Cove's filed rate schedules, the monthly rate should have been \$230.00, or \$11.50 per apartment unit.

36. Table II indicates the discrepancies in amounts actually billed and that required by Spanish Cove's filed rate schedules:

**TABLE II**

Customer	Units	Occupancy Date	Amount Charged	Filed Rate (Monthly)	Monthly Difference	Annual Difference	Months of Service	Total Difference	Amount of Refund (Billing) Required (B)
T.K.'s Pub		9/4/94	\$ 160.00	\$ 32.00	\$ 128.00	\$ 1,536.00	40	\$ 5,120.00	\$ 5,120.00
Concord Custom Cleaners		10/13/89	\$ 150.00	\$ 32.00	\$ 118.00	\$ 1,416.00	96	\$11,328.00	\$ 5,664.00
Winn-Dixie		3/30/95	\$ 195.00	\$ 32.00	\$ 163.00	\$ 1,956.00	31	\$ 5,053.00	\$ 5,053.00
5500 Delmarie Way (A)	12	7/5/89	\$ 136.00	\$ 138.00	\$ (2.00)	\$ (24.00)	99	\$ (198.00)	\$ (12.00)
5502 Delmarie Way (A)	12	1/4/85	\$ 136.00	\$ 138.00	\$ (2.00)	\$ (24.00)	153	\$ (306.00)	\$ (12.00)
Fireside Properties, Inc. (A)	4	12/11/92	\$ 45.00	\$ 46.00	\$ (1.00)	\$ (12.00)	58	\$(58.00)	\$ (6.00)
SMV Properties (A)	20	5/10/95	\$ 15.30	\$ 230.00	\$ (214.70)	\$(2,576.00)	29	\$ 6,226.30	\$(1,288.20)
Hurstbourne Terrace Apartments (A)	72	12/22/92	\$ 745.50	\$ 828.00	\$ (82.50)	\$ (990.00)	58	\$(4,785.00)	\$ (495.00)
Hurstbourne Gardens Apartments (A)	48	8/29/86	\$ 497.00	\$ 552.00	\$ (55.00)	\$ (660.00)	134	\$(7,370.00)	\$ (330.00)

Key: A – Apartment Building

B – Amount that Spanish Cove may backbill or be required to refund when KRS 278.225 and KRS 424.120(2) are considered. KRS 278.225 provides that no customer shall be liable for unbilled service after 2 years from the date of the service. KRS 424.120(2) requires that an action upon a liability created by statute, when no other time is fixed, be brought within 5 years.

37. Spanish Cove willfully violated KRS 278.160 by knowingly charging rates other than those set forth in its filed rate schedules.

38. Lawson, in his capacity as president and sole shareholder of Spanish Cove, knowingly and willfully procured, aided, and abetted Spanish Cove's violation of KRS 278.160.

39. For its willful violation of KRS 278.160, Spanish Cove should be assessed a penalty of Five Hundred (\$500) Dollars.

40. For his actions in aiding and abetting Spanish Cove's violations of KRS 278.160, Lawson should be assessed a penalty of Five Hundred (\$500) Dollars.

IT IS THEREFORE ORDERED that:

1. Spanish Cove is assessed a penalty of Five Hundred (\$500) Dollars for its willful violations of KRS 278.160.

2. Lawson is assessed a penalty of Five Hundred (\$500) Dollars for aiding and abetting Spanish Cove's willful violations of KRS 278.160.

3. Within 30 days of the date of this Order, Spanish Cove and Lawson shall each pay their assessed penalties to the Commonwealth of Kentucky. Payment shall be in the form of a cashier's or certified check made payable to "Treasurer, Commonwealth of Kentucky" and shall be mailed or delivered to: Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, Post Office Box 615, Frankfort, Kentucky 40602.

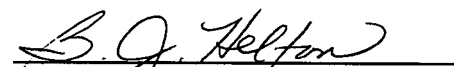
4. Within 60 days of the date of this Order, Spanish Cove shall adjust the bills of the customers listed in Table II to correct for improper billings. For customers who were overcharged, Spanish Cove shall by direct payment or billing credits refund the excess amount charged. For customers who were undercharged, Spanish Cove shall issue a

charge for the undercharged amount on its next billing. Spanish Cove shall not require customer repayment of any undercharged amount over a period less than the period in which the undercharges occurred. In making these adjustments, Spanish Cove shall observe the limitations contained in KRS 278.225 and KRS 413.120(1).

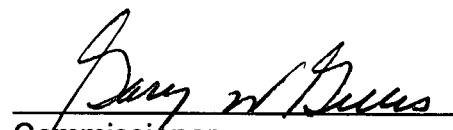
5. Within 30 days of the date of completing the billing adjustment, Spanish Cove shall file with the Commission a summary written statement containing a reconciliation of customer billings and the amount refunded or charged.

Done at Frankfort, Kentucky, this 12th day of October, 1998.

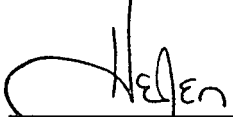
PUBLIC SERVICE COMMISSION

  
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ATTEST:

  
Executive Director